Court, U.S.
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No. ____

IN THE

Supreme Court of the United States

WILLIAM R. ADKINS,
Petitioner,

vs.

STATE OF WEST VIRGINIA,
Respondent.

Petition for a Writ of Certiorari to the West Virginia Supreme Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is a defendant entitled to specificity in verdict forms and/or instructions where he was charged in an indictment which alleged three identical, but separate acts of first degree sexual abuse and one additional count of first degree sexual abuse?

2. Did the trial judge err in refusing William R. Adkins' jury instruction concerning the factors to be considered in evaluating the voluntariness of his conviction.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix 1a to the petition and is unpublished.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1)

The date on which the highest state court decided my case was *April 9, 2003*.

A copy of that decision appears at Appendix A.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

RULE 31 OF THE WEST VIRGINIA RULES OF CRIMINAL PROCEDURE

Rule 31. Verdict.

(a) Return.—The verdict shall be unanimous. It shall be returned by the jury to the judge in open court.

(b) Several defendants and offenses.-If there is more than one defendant or offense being tried, the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or an offense as to which it has agreed; if the jury cannot agree with respect to all, the defendant or offense as to which it does no agree may be tried again. In all cases involving multiple defendants or offenses, the court shall require the jury to make a separate finding as to each defendant and offense.

(c) Conviction of lesser offense-The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

(d) Poll of jury.—When a verdict is returned and before it is recorded the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

(e) Criminal forfeiture.-If the indictment or the information alleges that an interest or property is subject to criminal forfeiture, a special verdict shall be returned as to the extent of the interest or property subject to forfeiture, if any.

FIFTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger, nor shall any person be subject for the same offense be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty , or property, without due process of law, nor shall private property be taken for public use, without just compensation.

SIXTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

STATEMENT OF THE CASE

On June 23, 1999, the Jackson County Grand Jury returned a four count indictment against William R. Adkins. (See T. 425) Each of the counts alleged in the indictment used exactly the same language to charge Mr. Adkins with First Degree Sexual Abuse in violation of West Virginia Code § 61-8B-7. Likewise, each count used the same time period by alleging that each count occurred between March 1, 1998, and February 11, 1999. Therefore, all counts were ***identical***. Mr. Adkins filed a motion for a bill of particulars requesting to be informed with the time, date, and place of each offense.

On August 2, 1999, the trial judge denied this motion. Later, the State did provide a November 15, 2000 letter which stated that all events occurred at Mr. Adkins' residence over the summer of 1998 and specified ***separate activities*** that were associated with each occurrence such as a barbecue of the making of a raft house in the backyard pool.

The allegations of sexual abuse by Mr. Adkins first surfaced in February of 1999 after a video entitled "When Should You Tell" was shown to a grade school class. (T. 53 & 116) S.B. subsequently disclosed the alleged abuse to a school counselor who then disclosed the information to Child Protective Services. This disclosure subsequently led to a criminal investigation of Mr. Adkins. (T. 122)

During the course of the investigation, Mr. Adkins was questioned by police on two occasions. (T. 206-213) The first occurred on February 18, 1999, in which he admitted to one instance of accidental contact during pool play. (T. 210). However, on March 1, 1999, he was questioned again for approximately 2-1/2 hours in connection with a polygraph exam. (T. 213) Following that examination, he admitted to one intentional touching that occurred in the summer of 1998. (T. 221) However, no specifics were elicited regarding any activities which were occurring at the pool at the time of this touching. *Id.*

Mr. Adkins challenged this statement as being induced by his long standing anxiety disorder, overuse of remeron and the promise by the police not to arrest him that day if he confessed. Supporting medical testimony was given by his family doctor. Interestingly, Mr. Adkins was, in fact, allowed to leave the police station after his statement. No legal process was instituted against him until the return of the indictment over three (3) months later.

On August 29, 2001, Mr. Adkins was tried before a jury of twelve men and women on a four count indictment alleging first degree sexual abuse of S.B. The trial of the case lasted

three days. On August 31, 2001, the jury was returned a guilty verdict on Count One of the indictment. But, the jury returned a verdict acquitting Mr. Adkins of the June 1998 count and two others.

Previously, while the jury was deliberating, counsel for Mr. Adkins had requested that if a split verdict was returned, that the jury be further polled to specify which of the four instances identified in that letter resulted in a guilty verdict. The judge refused this request. (T471).

Significantly, the three verdict forms for counts 1-3 each contained identical language. Counsel for Mr. Adkins then renewed his request that the jury specify which of the four separate events formed the basis for his conviction. (T475). The judge denied this motion.

REASONS FOR GRANTING THE PETITION

The United States Supreme Court has an interest in ensuring that the Constitutional rights of the citizens of the United States are protected. Often that involves clarifying and interpreting laws in criminal cases to ensure that criminal defendant's constitutional rights are protected. This is true even in cases where public opinion may not favor such clarification of rights. And although, federal courts throughout the country have addressed jury unanimity and specificity in verdict forms, federal courts have not seemed to address such a problem as it exists in the context of sexual abuse and/or assault cases involving children. Such cases often involve time where prosecutors charge multiple crimes for alleged multiple acts. This is because, often the memory of the children are such that it makes it difficult for the prosecution to define specific time periods. However, this difficulty and the need to protect children must be balanced with the Constitutional right of Defendants to be adequately informed of the charges such that they can properly defend as well as protection of their Sixth Amendment right of jury

unanimity. As such, it would be prudent for the United States Supreme Court of Appeals to tackle this difficult yet very important Constitution issue in sexual abuse and/or assault cases.

ARGUMENT

I. A DEFENDANT IS ENTITLED TO SPECIFICITY IN VERDICT FORMS AND/OR INSTRUCTIONS WHERE HE WAS CHARGED IN AN INDICTMENT WHICH ALLEGED THREE IDENTICAL, BUT SEPARATE ACTS OF FIRST DEGREE SEXUAL ABUSE AND ONE ADDITIONAL COUNT OF FIRST DEGREE SEXUAL ABUSE WHICH ONLY ALLEGED A DIFFERENT TIME PERIOD?

The requirement that a jury verdict be unanimous is a bedrock principle in our criminal jurisprudence. *U. S. v. Lee*, 317 F.3rd 26 (1st Cir. 2003). *See also Richardson v. United States*, 526 U.S. 813, 817 (1999); *Schad v. Arizona*, 501 U.S. 624, 634 n. 5 (1991). The source of this right to a unanimous verdict is derived from historical common law practice both in England and the colonies. *See U.S. v. Correa-Ventura*, 6 F.3rd 1070 (5th Cir. 1993).

Although the right does not specifically originate in the Constitution, it was recognized at common law as a means of insuring that the government has met its burden of proving all facts necessary to show the defendant's guilt. *Id.*

Thus, the unanimity rule[1] is a corollary to the reasonable-doubt standard, both conceived as a means of guaranteeing that each of the jurors "reach a subjective state of certitude" with respect to a criminal defendant's culpability before

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[1] Generally, "duplicity is reviewed during the pretrial phase, whereas unanimity must be determined after all the evidence has been introduced at trial. *See U.S. v. Correa-Ventura*, 6 F.3rd 1070 (5th Cir. 1993).

rendering a conviction. *Id.* The requirement that all twelve jurors be in agreement as to a defendant's guilt is employed to give substance to the reasonable-doubt standard; if a verdict is less than unanimous, the dissension tends to show that a reasonable doubt exists as to the criminal activity charged and has been interpreted to be a violation of the Sixth Amendment[2]. *Id.*

Similarly, Rule 31 of the West Virginia Rules of Criminal Procedure establishes that a Defendant is entitled to a unanimous verdict and to also have the jury make a separate finding as to each offense. *See* Rule 31 of the West Virginia Rules of Criminal Procedure.[3]

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[2]*See U.S. v. Fredette*, 315 F.3d 1235 (10th Cir. 2003) stating that "[t]he Sixth Amendment guarantees a federal criminal defendant the right to a unanimous jury verdict." (citing *United States v. Linn*, 31 F.3d 987, 991 (10th Cir. 1994). Convictions of an offense requires a finding of guilt beyond a reasonable doubt as to each and every element of the offenses charged in the indictment. In cases where a defendant is tried before a jury, the Sixth Amendment guarantees that the jury's findings of guilt by unanimous. *See U.S. v. Sarihifard*, 155 F.3rd 301 (4th Cir. 1998).

[3]Rule 31 of the West Virginia Rules of Criminal Procedure states as follows:

> Rule 31. Verdict.
>
> (a) Return.—The verdict shall be unanimous. It shall be returned by the jury to the judge in open court.
>
> (b) Several defendants and offenses.—If there is more than one defendant or offense being tried, the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or an offense as to which it has agreed; if the jury cannot agree with respect to all, the defendant or offense as to which it does no agree may be tried again. In all cases involving multiple defendants or offenses, the court shall require the jury to make a separate finding as to each defendant and offense.
>
> (c) Conviction of lesser offense—The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or

In *State v. Marcum*, the Wisconsin Court of Appeals addressed a very similar issue as the one presented in the case at bar. 480 N.W.2d 545 (Wis 1992). In Marcum, the initial complaint charged Harrison M. Marcum with two counts of sexually assaulting his stepdaughter, alleging one event in August 1989 and one in September 1989. *Id.* The complaint alleged that Marcum committed hand-to-vagina, hand-to-breast, and penis-to-vagina contact twice in August and twice in September. Id. The complaint also stated that sometimes there was penis-to-mouth contact.

At the preliminary hearing, Mr. Marcum's stepdaughter (hereinafter "C.O.") related two September incidents. On the first occasion there was hand-to-vagina contact; on the second, there was both penis-to-vagina and penis-to-mouth contact. The subsequent information charged Marcum with six counts. *Id.*

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an offense necessarily included therein if the attempt is an offense.

(d) Poll of jury.—When a verdict is returned and before it is recorded the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

(e) Criminal forfeiture.—If the indictment or the information alleges that an interest or property is subject to criminal forfeiture, a special verdict shall be returned as to the extent of the interest or property subject to forfeiture, if any.

Identical wording was used in each of the six counts, except for the month and year.[4] Specifically, counts four, five and six were worded in the following manner:

The defendant did in September 1989 feloniously have sexual contact with a person who has not attained the age of 13 years, to wit, C.O. a juvenile female whose date of birth is

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[4] Similarly, in the case at bar, identical wording (other than the dates) was used in the charging instrument and the charge to the jury. Specifically, the Judge instructed the jury as follows: "In arriving at your verdicts in this case, you must separately consider each of the four charges in the indictment. Before William R. Adkins can be convicted of sexual abuse in the first degree, as charged in the first, second and third counts of the indictment, as to each count, the State of West Virginia must overcome the presumption that he is innocent and must prove to the satisfaction of the Jury beyond a reasonable doubt that, one, the defendant, William R. Adkins; two, in Jackson County, West Virginia; three, on a day between March 1, 1998, and February 11, 1999; four, did intentionally subject S.B. to sexual conduct by way of intentionally touching her female sex organ; five, without the consent of S.B.; six, he the said William R. Adkins, being fourteen years of age or older, and the alleged victim, S.B., being eleven years old or less; seven, that the said William R. Adkins and S.B. were not married to each other; and eight, that the touching by said William R. Adkins of the said S.B. was done for purpose of gratifying the sexual desire of William R. Adkins."

The Judge went on to instruct the jury as to count four, stating, "[b]efore William R. Adkins" can be convicted of sexual abuse in the first degree as charged by the fourth count of the indictment, the State of West Virginia must overcome the presumption that he is innocent and prove to the satisfaction of the Jury, beyond a reasonable doubt, that, one, the defendant, William R. Adkins; two, in Jackson County, West Virginia; three, on a day in approximately mid June, 1998, after the end of the 1997/1998 school year and before the beginning of the next school year; four, did subject S.B. to sexual contact by way of intentionally touching her female sex organ; five, without the consent of S.B.; six, he, the said William R. Adkins, being fourteen years of age or older and the alleged victim, S.B., being eleven years old or less; seven, that the said William R. Adkins and S.B. were not then married to each other; and eight, that the touching by the said William R. Adkins to the said S.B. was done for the purpose of gratifying the sexual desire of William R. Adkins.

2/4/79; said conduct by the defendant being contrary to Section 948.02, Wisconsin Statutes. *Id.*

At the instructions conference, Marcum's attorney stated that the proposed identical verdicts needed specification as to the time frame. He expressed concern that the jury would not know what or recall what count 1, 2, 3, 4, 5, and 6 were in their deliberations. The court agreed to change the wording of the verdicts to include the language about the dates for each count "as set forth in the information."

Subsequently, the jury returned a guilty verdict on count six and not guilty on counts four and five. A post-conviction motion alleging unanimity problems was denied by the trial court on the ground that the three counts in September involved "conceptually similar acts." *Id.*

Marcum appealed the conviction asserting that the lack of specificity in the verdict forms deprived him of his constitutional right to a unanimous verdict.[5] The Wisconsin Appellate court found that it was unable, from the state of the record, to determine which of the several alleged acts let to Mr. Marcum's conviction on count six. Additionally, the Court was unable to know which acts the jury acquitted him of in counts four and five.[6] *Id.*

The state posited that the charge to the jury to be unanimous as to guilt translates into juror knowledge that they must be unanimous about which act the defendant was guilty of. The Court disagreed and held that such a verdict

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[5]Mr. Marcum also alleged ineffective assistance of counsel by his attorney's failure to request specificity in the verdict forms.

[6]The State conceded that it was also unable to identify the acts that led to the convictions. However, the state claimed that it was unnecessary for anyone to know.

form violated Mr. Marcum's Sixth Amendment right of unanimity and his Fifth Amendment right of due process.[7] *Id.*

The Wisconsin Court of Appeals held that there was nothing to focus the jury on a specific act or alternative forms of a specific act. The Court further held that the general unanimity instruction did not inform the jury that they had to agree on ***which act*** formed the basis of their verdict. *Id.*

The Court went on to state,

> The standard instruction when applied to unspecific verdicts, as in this case, left the door open to the possibility of a fragmented or patchwork verdict. For instance, there was nothing to prevent three jurors from thinking there was hand-to-vagina contact, three thinking hand-to-breast contact, three thinking penis-to-vagina contact, and three thinking penis-to-mouth contact when they agreed to find him guilty of count six. Yet those same acts could already have formed the basis for the juror's agreement to find Marcum not guilty of counts four and five. Such and outcome would violate

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[7]The Court noted that the key to resolving whether act are to be considered "conceptually similar enough to be charged in one count" as opposed to being charged separately in distinct counts is by use of the category of "separate volitional acts." Id. Specifically, the Court stated that where there is evidence of separate volition acts of illegal sexual conduct, charging in separate counts is proper and does not pose a multiplicity problem. In contrast, where thee is evidence that several separately enumerated acts of illegal sexual conduct were committed as one volitional act, the legislature's separate enumeration in the statute simply represents alternative means of committing the crime, and charging the crime in one count as a continuing offense does not raise problems of duplicity. Thus, the relevance of this distinction is that the prosecution's charging choice has implications for a defendant's right to verdict specificity and to a unanimous jury. Thus, where a jury is asked to determine whether or not a defendant committed multiple crimes, ***jury unanimity is required as to each crime. (Emphasis added).***

the due process requirement that the prosecution prove each essential element of the offense beyond a reasonable doubt. *Id.*

As such, the Court held that Mr. Marcum was indeed entitled to specificity in the verdict forms and thus had been deprived of his constitutional right to a unanimous verdict. (Emphasis added)

Likewise, ***a corollary to the well-established principles of unanimity is that a jury must be presented with verdict forms that adequately distinguish each separately charged crime. If identical verdict forms are to be permitted for crimes also identically charged the right to a unanimous jury would be meaningless. Id. (Emphasis added).***

Similarly, in the case at bar, the jury had to determine whether the State of West Virginia had proven beyond a reasonable doubt whether Mr. Adkins had committed four separate and distinct acts of first degree sexual abuse.

At the trial, S.B. testified concerning three separate times that she was touched by Mr. Adkins: (1) once during a barbecue (T43); (2) twice while building a raft house and laying on a step (T46-77); and twice after viewing a cartoon on his computer (T49-52).

When describing the barbecue incident, S.B. testified as follows:

Q. Do you remember anything specific about any of those five times? Like you said you didn't remember the first time. Tell us about a time that you do remember?

A. I think we were at a barbecue or something, and we were night swimming and he was bouncing me on his knee and then he was tickling my leg and then he stuck his hand in my shorts, and I moved away and I asked my dad for help, but I was laughing so my dad though I was joking.

When describing the incident that allegedly occurred while building a raft house and laying on a step, S.B. testified as follows:

Q. Do you remember any other times?
A. I remember when me and my brother, C.B., were swimming there.

. . .

Q. What happened then, that time?
A. We built raft houses and I wanted him to see my house first. And he asked me to lay down on the step to see how deep the water was on me, and I laid on my back and he told me to turn, so I laid on my side and he tried to stick his hand in my shorts again.

. . .

Q. And when he put hand in your shorts, where did he touch you?
A. On my front part?
Q. Your front part?
A. Yeah.
Q. Private area?
A. Yes.

S.B. also testified to another occasion that allegedly occurred after viewing a cartoon on Mr. Adkins' computer. No additional testimony was elicited from any other witnesses to establish dates, times, or particular incidents that led to the charges against Mr. Adkins. Thus, while the jury was told to separately consider each charge (charge P.9), there was nothing in counts 1-3 to differentiate them from each other. Each count (1-3) included exactly the same elements and dates. There was nothing to distinguish them from each other or which event was made the basis of the charge.

Furthermore, despite requests, Mr. Adkins was never informed and had no way of determining which of the four events (the alleged barbecue incident, raft house, or after the computer cartoon) identified by the State led to his

conviction. Trial counsel for Mr. Adkins recognized this problem and specifically requested the court to require the jury to identify the event that led to his conviction pursuant to Rule 31 of the West Virginia Rule of Criminal Procedure. (T471 & 475). However, the motion was denied.

Thus, in the case at bar (as in Marcum) it is impossible to determine from the record that all jurors agreed that Mr. Adkins committed one of these separately charged crimes. For instance, some of the could have concluded it occurred during a barbecue, others within the raft house and still others after having viewed the cartoon.

Additionally, this case does not involve one crime with alternative means of committing it. *See Schad v. Arizona*, 501 U.S. 624 (1991) (Defendant' conviction of First Degree Murder upheld on proof of either premeditated murder or felony murder). Rather, this case involves four separate and distinct crimes. Since there was nothing in the verdict forms to distinguish the three counts it is possible that the jurors did not unanimously agree on which event led to Mr. Adkins'conviction.

Thus, the trial court committed error in refusing counsel' request to identify which of the three separate instances a testified to by S.B. led to Mr. Adkins'conviction.

II. DID THE TRIAL JUDGE ERR IN REFUSING WILLIAM R. ADKINS' JURY INSTRUCTION CONCERNING THE FACTORS TO BE CONSIDERED IN EVALUATING THE VOLUNTARINESS OF HIS CONVICTION.

The West Virginia Supreme Court of Appeals has often recognized the strong role that a defendant' statement has in a criminal case stating, ". . . A confession is always very important evidence. It is hard for a jury to ignore a confession. Thus, for a defendant to receive a fair trial must be able to inquire in to the reliability of the confession." *State v.*

McCallister, 357 S.E.2d 759, 762 (WV 1987). (Defendant's conviction as aider and abettor on robbery reversed due, in part, to the fact that the Defendant was prevented from fully challenging the reliability of her confession,). In this case, the trial court committed error by refusing to fully instruct the jurors on the factors they should consider in evaluating the voluntariness of Mr. Adkins' confession.

At trial, Mr. Adkins testified that he was told by the trooper that if he confessed he would not be arrested (T 401). In fact, he was not arrested after giving the March 1, 1999 statement admitting to one intentional touching (T 404).

At the conclusion of the case Mr. Adkins submitted an instruction on voluntariness taken from *State v. Goodman*, 290 S.E.2d 260 (WV 1981). The trial court refused this instruction stating that it was adequately covered by the charge.

Mr. Adkins then requested that language be added to the charge to focus the jury on his specific contention regarding the voluntariness of this confession, i.e. that it was induced by a promise not to arrest him. However, the trial judge refused to even add this language. (T 372-373). This was an abuse of discretion and error.

First, while the counselor was allowed to repeat the allegations of S.B. and to give her opinion, over objection, concerning the ultimate fact of abuse, this case was primarily S.B.'s testimony against that of Mr. Adkins. On the same evidence and facts the jury found in Mr. Adkins' favor on three counts and convicted him of one. In his statement, he only admitted to one touching without supplying any specific facts concerning the circumstances of this touching. He did not state that it occurred during a barbeque, building raft houses, laying on the steps, or after watching a cartoon as S.B. had testified. The conclusion is inescapable that the jury discredited the allegations of S.B. as evidenced by the three not guilty verdicts. Therefore, the alleged confession became pivotal to this case.

However, the Court's charge to the jury committed Mr. Adkins' claim of inducement. Instead, the charge focused on punishment telling the jury to consider if depravation of food or sleep was used by the police (See page 5-6 of the charge). On the other hand, Mr. Adkins' instruction told the jury that a statement is only voluntary if it is done not because of "pressure of hope or fear to confess of facts things which are not true in an effort to secure a promised reward. . ." This language was directly from State v. Goodmon and should have been given to present Mr. Adkins' legal position concerning the statement.

While it is true that instructions are viewed as a whole and that a trial judge has discretion in formulating the charge, it is also true that the judge's charge in this case did not allow the jury to fully understand Mr. Adkins' legal position regarding this crucial evidence in his case. *State v. Hinkle*, 489 S.E.2d 257 (WV 1996), provides that an instruction by the defense should be given if it is substantially correct, is not covered substantially in the charge given, and embodies an issue so important that the failure to give the instruction seriously impairs the Defendant's ability to defend the case.

In this case the judge relied almost exclusively on the charge to the jury contained on the Supreme Court's web page. That charge specifically directs the Court to insert considerations for determining voluntariness from *State v. Bradshaw*, 457 S.E2d 456 (WV 1995). That case delineates important factors to consider such as mental coercion, deception, inducements, and/or other forms of psychological pressure. Significantly, the trial court's charge omits consideration of any of these factors which Mr. Adkins asserts were essential to the consideration of his statement by the jury.

Therefore, it was error to refuse Defendant's instruction No. 4 and a further abuse of discretion to not at least include Mr. Adkins' additional language as requested concerning promises, threats, or his treatment while in custody as shown

by all the evidence in the case (See T. 372). These factors embodied Mr. Adkins' challenge to his statement. Clearly, the statement influenced the jury as he was convicted only on one count. Thus, failure to adequately apprize the jury was prejudicial in light of the entire record.

CONCLUSION

The requirement that a jury verdict be unanimous is a bedrock principle in our criminal jurisprudence. In the case at bar, there was nothing in the jury charge to focus the jury on a specific act or alternative forms of a specific act. Thus, the Court's general unanimity instruction did not inform the jury that they had to agree on ***which act*** formed the basis of their verdict. The standard unanimity instruction led to a fragmented or patchwork verdict. As such the failure of the Court to instruct the jury that it must be unanimous with regard to which specific act or instance constituted the illegal conduct violated the Mr. Adkins' Sixth Amendment right to jury unanimity and his due process rights that requires the prosecution to prove each essential element of the offense beyond a reasonable doubt.

Additionally, it was error for the trial Court to refuse Defendant's instruction No. 4 and a further abuse of discretion to not at least include Mr. Adkins' additional language as requested concerning promises, threats, or his treatment while in custody as shown by all the evidence in the case. These factors embodied Mr. Adkins' challenge to his statement. Thus, failure to adequately apprize the jury was prejudicial in light of the entire record.

As such, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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